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Paper No. 8

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Technology Center 2100

In re Application of: A. Szabo
Application No. 09/400,649
Filed: September 21, 1999
For: NUTRITIONAL OPTIMIZATION
SYSTEM AND METHOD

DECISION ON PETITION UNDER
37 CFR 1.181 TO WITHDRAW
HOLDING OF ABANDONMENT

This is a decision on the petition under 37 C.F.R. §1.181, filed September 10, 2001, requesting the holding of abandonment be withdrawn in the above-identified application.

This application was held abandoned for failure to respond in a timely and effective manner to the Office action mailed January 17, 2001 (Paper No. 5). A Notice of Abandonment was mailed August 28, 2001 (Paper No. 7).

Petitioner states that a response was in fact timely filed. To support this assertion, petitioner has submitted a date-stamped copy of a return postcard. Petitioner has also submitted a copy of the response.

M.P.E.P. § 503 states that “[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.”

The post card receipt bears a date of April 20, 2001, lists the serial number of the application and itemizes and identifies the papers filed. The copy of the papers bears a certificate of mailing dated April 17, 2001. While the date of the post card receipt is outside the three month shortened statutory period set by the Office action mailed January 17, 2001, in light of the above mentioned certificate of mailing, the response is accepted as received in the Office and timely.

In view of the above stated reasons, the record is now clear that the application was not abandoned in fact and a Notice of Abandonment should not have been issued. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is **GRANTED**.

The application file is being forwarded to the Technology Center support staff for entry of the copy of the response filed with the petition. The file will then be forwarded to the examiner for consideration of the response.


John J. Love, Director
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Computer Architecture, Software,
& Electronic Commerce